E. A. LONG v. WONG CHIU WAH & ORS.; THE PUBLIC INSURANCE CO. LTD., Third Party.

[O. C. J. (Rigby J.) March 7, 1957]

[Penang — Civil Suit No. 142 of 1956]

Negligence — Admissibility of plea of guilty on a charge of negligent driving in subsequent civil proceedings — Person instructing learner to drive a car — Whether both are jointly drivers of the car — Liability of owner of car who lends the car for reward with the knowledge that car is to be used for teaching a third party to drive.

In this case the plaintiff claimed damages for personal injuries sustained by him against (a) the third defendant as the learner-driver of a motor car, (b) the second defendant who was teaching the third defendant to drive, and (c) the first defendant, the owner of the car, who had hired the car to the second defendant with the knowledge that the car was to be used for teaching the third defendant to drive. The second and third defendants had both pleaded guilty when they were charged with negligent driving.

Held: (1) the admission of liability, in the sense of the plea of guilty to the charges of negligent driving preferred against the second and third defendants, was admissible in this case;

(2) both the second and third defendants were jointly driving the car at the material time;

(3) the owner of a hire car service who hires his car for reward to another party with the full knowledge that the car is to be used for teaching a third party to drive cannot be heard to say that he has hired the car to a third person for purposes in which he, as owner has no interest or concern and therefore in this case the first defendant was liable for the negligence of the second defendant as his agent.

Cases referred to:—

(1) *Hollington v. Hewthorn & Co. Ltd.* (1943) 2 All E.R. 35.

(2) *Noor Mohamed v. Palanivelu & Anor.* (1956) M.L.J. 114.

(3) *Langman v. Valentine* (1952) 2 All E.R. 803.

(4) *Evans v. Walkden* (1956) 1 W.L.R. 1019.

(5) *Du Cros v. Lambourne* (1907) 1 K.B. 40.

(6) *Ormrod & Anor. v. Crosville Motors Services Ltd. & Anor.* (1953) 2 All E.R. 753.

ACTION for Damages.

Eusoffe Abdoolcader for the plaintiff.

Chee Yoon Heng for the 1st defendant.

2nd defendant in person.

Lim Huck Aik for the Third Party.

Rigby J. (delivering oral judgment): — In this action the plaintiff, Mr. Long, a Magistrate of the Settlement of Penang, claims damages against the three defendants, jointly and severally, for personal injuries sustained by him as the result of an accident which took place on the evening of the 2nd August, 1956.

The facts of the case present no difficulty. At about 11.30 p.m. on the evening of the 2nd August, 1956, the plaintiff was sitting on a bench on the pavement in Gurney Drive and on the sea side of that pavement. He was, no doubt, sitting there quietly enjoying the night air at the end of the day's work. Suddenly, without any warning, the plaintiff was rudely removed from his seat by a car which mounted the pavement and crashed into the rear of the bench on which he was sitting. There can be not the slightest possible doubt on the evidence before me, coupled with the plea of guilty of both occupants of that car, the 2nd and 3rd defendants, when they were subsequently charged with negligent driving, that the impact was due to the negligence of the defendants. The admission of liability, in the sense of the plea of guilty of both the defendants to the charges of negligent driving preferred against them is, in fact, admissible in law in this case on the authority of *Hollington v. Hewthorn & Co. Ltd.*[1], (referred to in *Noor Mohamed v. Palanivelu & Anor*[2]). As a result of the accident — if I may call it such — the plaintiff was admitted into hospital the same night. He had sustained abrasions, extreme tenderness over the lower chest and a fracture of the 8th rib on the left side. He was discharged from hospital on the 9th August, 1956, but continued to receive medical treatment until approximately the end of August, and thereafter for approximately a month was only able to pursue his work as a Magistrate on half days. In evidence before this Court he complains that as a result of the injuries he then received he still suffers from bouts of giddiness and occasional pain on the left part of his chest.

At the time of the impact the car was being driven by the 3rd defendant, who was a learner driver and the holder of a provisional licence to drive. The 2nd defendant, who was sitting next to him in the car, was the holder of a competent driving licence and was, in fact, teaching him to drive at the time of the occurrence. The evidence establishes that the car had been hired at about 10.00 p.m. that evening from the 1st defendant who was the owner of the Ping Hwa Drive Yourself Car Service at 89, China Street, Penang.

No defence to the claim was delivered by the 2nd and 3rd defendants and on the 9th November, 1956, interlocutory judgment was entered against them for the sum of $351.70 special damages and for general damages on the main issue of the claim, to be assessed by this Court. In so far as the 1st defendant is concerned, the injuries sustained by the plaintiff, together with his claim for special damages, have been admitted by the 1st defendant during the course of this action. He resists the claim only on the issue of liability for the negligence of the 2nd and 3rd defendants

in so far as he is concerned. On the evidence, despite the denial of the 1st defendant, I am satisfied beyond any possible doubt that on the evening in question not only did he hire the car to the 2nd defendant with the full knowledge that it was to be used for the specific purpose of the 2nd defendant instructing the 3rd defendant to drive, but that he also provided the defendants with the necessary "L" plates to be attached to the car before the car was driven away from his firm's premises. It would appear that prior to taking delivery of the car the 1st defendant presented to the 2nd defendant a document which has been produced in evidence on behalf of the 1st defendant. The document is, in fact, signed by the 2nd defendant. It purports to be an Application to Hire a Car. Clause (d) of that document states :—

"The hirer shall not allow any persons other than himself or the driver whose name appears in the Application to drive or otherwise people (? propel) the said motor car."

The document itself is written in both English and Chinese. The 2nd defendant is a Tamil. He stated in evidence, and I have no hesitation in believing him, that he can neither read nor write English — nor, it is perhaps reasonable to assume, Chinese. He states, and again I accept it as a fact, that when he signed that document it was neither read over to him nor explained to him, and he thought that the document was merely an acknowledgment of the fact that he had taken possession of the car. It is, therefore, apparent on the one hand that the 1st defendant hired the car for reward to the 2nd defendant with the specific knowledge that it was to be used for the purpose of instructing the 3rd defendant to drive and, on the other hand, at one and the same time, he obtained the 2nd defendant's signature on this form which contains the clause to which I have referred. The document, to my mind, is utterly worthless in so far as it affects the rights of third parties not parties to the document. The document, to my mind, and the conduct of the 1st defendant at the time is worthy of the gravest censure; it was palpably dishonest.

The facts indicate that at the time of the occurrence the 3rd defendant was, in fact, driving the car. The 2nd defendant was sitting next to him as instructor and was in a position to have a full measure of control over the actions of the 3rd defendant. According to the evidence of the 3rd defendant, which I accept, not merely did the 2nd defendant give him verbal instructions as to how to drive the car but he also, from time to time, took possession of the steering wheel to guide the car and put his foot across and over the foot of the 3rd defendant in control of the clutch and accelerator. In addition to that, of course, he had full control of the hand brake, which was placed between the two seats. In my view, therefore, the 2nd defendant had both a marked degree of possession and control of the vehicle, and he was, on the facts of the case, jointly a driver of the vehicle with the 3rd defendant. In my view the facts are on all fours with the case of *Langman v. Valentine*[3] referred to by Mr. Eusoffe Abdoolcader in his characteristically careful and meticulous opening of the law applicable to this case. In that case the justices held on similar facts that the instructor had sufficient control of the car to enable them to find that he was a driver thereof, and the appellate court held that there was sufficient evidence before the justices to justify them in holding that both persons were driving the car. I am, of course, aware of the decision in the case of *Evans v. Walkden*[4] in which Lord Goddard, L.C.J. commented on the undesirability of any extension of *Langman v. Valentine*[3] or any application of the decision of that case to facts which are not strictly in line with it. I am, however, of the opinion that the facts in the present case are sufficiently identical with *Langman v. Valentine*[3] to justify me in following that case, and in holding that in the present case, on the facts, both the 2nd and 3rd defendants were jointly driving the car at the material time. I go further and say — although it is not strictly necessary for the purposes of this case — that again, in my view, the two defendants, on the authority of *Du Cros v. Lambourne*[5] could have been jointly charged as principal offenders with the commission of the offence of negligent driving contrary to section 4(2) of the Motor Vehicles (Driving Offences) Proclamation. But, as I have said, in my view, both the 2nd and 3rd defendants were clearly negligent and liable in law to the plaintiff for damages for the injuries suffered by him.

As to the 1st defendant. On the view of the evidence which I take it is clear that he hired the car for reward to the 2nd defendant with the full knowledge that it was to be driven by the 3rd defendant as a learner driver under the tuition of the 2nd defendant. The legal position of the owner of a motor vehicle who lends his vehicle to another person and an accident arises thereafter as the result of the negligent driving of that other person, is considered in the case of *Ormrod & Anor. v. Crosville Motors Services Ltd. & Anor.*[6]. In that case Denning L.J., in the course of his judgment said :—

"It has often been supposed that the owner of a vehicle is only liable for the negligence of the driver if that driver is his servant acting in the course of his employment. That is not correct. The owner is also liable if the driver is his agent, that is to say, if the driver is, with the owner's consent, driving the car on the owner's business or for the owner's purposes."

The learned Lord Justice later goes on to say :—

"The law puts an especial responsibility on the owner of a vehicle who allows it to go on the road in charge of someone else, no matter whether it is his servant, his friend, or anyone else. If it is being used wholly or partly on the owner's business or for the owner's purposes, the owner is liable for any negligence on the part of the driver. The owner only escapes liability when he lends it or hires it to a third person to be used for purposes in which the owner has no interest or concern."

Can it be said in this case that the 1st defendant hired his vehicle to the 2nd and 3rd defendants to be used for purposes in which the owner had no interest or concern? Clearly there was a statutory obligation on the 1st defendant, as owner of the car, to insure against accidents to third parties. The 1st defendant knew full well that the car was to be hired, and was, in fact, hired, by the 2nd defendant for the specific purpose of teaching the 3rd defendant how to drive. The 1st defendant therefore entrusted the car to the 2nd defendant, for reward, with the assumption that the 2nd defendant had the requisite knowledge and skill to instruct and supervise the 3rd defendant, as a learner, to drive the car. It seems to me, therefore, that to that extent — namely, the entrustment of the car with the knowledge that it was to be used for a specific purpose, to wit, teaching the 3rd defendant how to drive — the 2nd defendant can properly be regarded as the agent of the 1st defendant and the 1st defendant, as principal, was responsible for the negligent driving of his agent. In my view the owner of a Hire Car who hires his car for reward to another party with the full knowledge that the car is to be used for teaching a third party to drive cannot be heard to say, in the words of Denning L.J. that he has hired the car to a third person for purposes in which he, as owner, "has no interest or concern". For these reasons I am of the opinion that the liability of the 1st defendant for the negligence of the 2nd defendant, as his agent, has been fully established.

It remains only to consider the quantum of damages. It is virtually impossible in cases of this nature to standardise the quantum of damages to be awarded for pain and suffering occasioned by a plaintiff in a case of this nature. I have given the matter the most anxious and careful consideration. On the facts of the case I am of the opinion that a fair and reasonable sum to award is a sum of $2,000 as general damages. I order accordingly.

There will accordingly be judgment for the plaintiff against the three defendants jointly and severally for the sum of $2,000 general damages and $351.70 special damages, together with the costs of this action.

Judgment for the plaintiff.

Solicitors : *Ong Huck Lim & Co.; Pillai, Lim, Lee & Hwang; Huck Aik & Cheng Hock.*

SARDARA ALI v. SARJAN SINGH

[C. A. (Thomson C.J., Hill & Syed Sheh Barakbah JJ.) March 15, 1957]

[K. L. — F.M. Civil Appeal No. 48 of 1956]

Tort — Claim for trespass for removing lorry from plaintiff's premises without his consent — Evidence that plaintiff and defendant had practised a deceit on the public administration of the country in order to get a haulage permit for the vehicle — Plaintiff not relying on illegal transaction to support his claim.

In this case the plaintiff had entered into an agreement with the defendant whereby the lorry, the subject of the proceedings, was to become the property of the plaintiff, although it was to be registered in the name of the defendant, as it was thought that the defendant would be able to obtain a haulage permit for the lorry. Subsequently the defendant removed the lorry from the plaintiff's possession without his permission. The plaintiff claimed damages for trespass. The learned trial Judge found that the lorry belonged to the plaintiff and that the defendant had removed it from his possession but gave judgment for the defendant as the facts showed that the plaintiff and defendant had practised a deceit on the public administration of the country to get a haulage permit for his vehicle. He held that the Court should not assist the plaintiff when he was cheated by his fellow conspirator.

Held: the plaintiff in this case did not seek to found his claim on the illegal transaction and therefore he was entitled to have his right to possession of the lorry enforced against the defendant.

Cases referred to :—

(1) *Simpson v. Nicholls* 3 M. & W. 240, 244.
(2) *Scarfe v. Morgan* 4 M. & W. 270, 281.
(3) *Bowmakers Ltd. v. Barnet Instruments Ltd.* (1945) 1 K.B. 65.
(4) *Pearce v. Brooks* (1886) L.R. 1 Ex. 213.
(5) *Reid v. Fairbanks* (1853) 13 C.B. 692, 727.

COURT OF APPEAL.

C. S. Jayaswal for the appellant-plaintiff.

Dato Sir E. E. C. Thuraisingham for the respondent-defendant.

Thomson C.J. (with whom **Syed Sheh Barakbah J.** agreed) : — In this case the plaintiff sued for a variety of remedies in respect of the taking out of his possession by the defendant of a motor lorry which he, the plaintiff, alleged to be his property.

The plaintiff's case was that in December, 1948, he paid $1,500 to the defendant and that the defendant then purchased six second-hand motor lorries from the Military Disposals Board. It was agreed between the parties that in respect of the payment of $1,500 one of these lorries, the subject of the present proceedings, should become the property of the plaintiffs although it was to be registered in the name of the defendant. The reason for this was that it was thought that the defendant would be able to obtain a haulage permit in